

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

UNITED STATE OF AMERICA,

Plaintiff,

v.

MURVILLE LAVELLE LAMPKIN,

Defendant.

Case No. 3:15-cr-00005-SLG-DMS

ORDER REGARDING SECTION 2255 PROCEEDING

On January 28, 2021¹, a self-represented federal prisoner, filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence, at Docket 983. Pursuant to Rules 4, 5, and 8(b) of the Rules Governing Section 2254 and 2255 Cases in the United States District Courts,

IT IS HEREBY ORDERED:

1. This matter will not be referred to a Magistrate Judge under Local Magistrate Rule 4(4). Instead this case will remain assigned to the District Judge.

2. The Criminal Justice Act (CJA) authorizes the Court to appoint an attorney for a person filing a Section 2255 motion who cannot afford an attorney.

On or before **March 1, 2021**, Mr. Lampkin must file either (1) a request for court-appointed counsel on the enclosed Application for Appointment of Counsel and

¹ Docketed on January 29, 2021.

Financial Affidavit, or (2) a Notice of Intent to Proceed Without Counsel, and to represent himself.

3. The Clerk of Court is directed to send the Court's form PS08, Motion for Appointment of Counsel; a form CJA 23, Financial Affidavit; and a form PS18, Notice of Intent to Proceed Without Counsel, to Mr. Lampkin with this order.

4. Unless Mr. Lampkin timely elects to be self-represented on the motion pursuant to paragraph 2 of this order, then on or before **March 15, 2021**, the Federal Public Defender shall designate counsel from the CJA Panel or the FPD to represent Mr. Lampkin on this motion. Once designated, appointed counsel will immediately file a notice of appearance.

5. Counsel for Mr. Lampkin shall review the record, confer with him, and file either: (1) an amended Section 2255 motion, or (2) a notice stating that no amended motion will be filed, on or before **May 14, 2021**.

6. The United States Attorney shall file a response within **60 days** from the date of service of (1) a notice that Mr. Lampkin will represent himself; (2) a Court order denying appointment of counsel; (3) a notice filed by Lampkin's counsel stating that no amended motion will be filed; or (4) an amended motion filed by Mr. Lampkin's counsel. The response shall include a statement as to whether the Government asserts that any claim is procedurally barred, which shall include the defense of the statute of limitations. Under Rule 5(b) of the Rules Governing Section 2254 and 2255 Cases, the response will address the

allegations of the motion, and, in addition, state whether Mr. Lampkin has used any other available federal remedies, including any prior post-conviction motions, to address the issues presented, and whether the moving party received an evidentiary hearing. The United States Attorney must also supplement the response with appropriate copies of transcripts, affidavits, and a memorandum of points and authorities material to the issues raised.²

7. Counsel for Mr. Lampkin may file a reply to the response within **21 days** of service of the Government's response.

8. There shall be no further briefing on the petition unless ordered by the Court.

9. The Court may hold an evidentiary hearing on its own motion, or on the motion of a party. Either party may make a motion for an evidentiary hearing within thirty days after the date the United States Attorney files a response. A motion for an evidentiary hearing must contain a clear and concise statement of the necessity of the hearing, including why the evidence in the record is not sufficient.³

10. No party may have any *ex parte* communication (that is, communication without the presence and/or knowledge and consent of the other parties) with a United States District Judge or Magistrate Judge of this Court about

² Rule 5(c), Rules Governing Section 2254 and 2255 Cases.

³ See D. Ak. HCR 8.1.

the merits of this action. If an attorney is appointed to represent Mr. Lampkin, all communication with the Court on behalf of Mr. Lampkin must only be made through filings by his lawyer.

DATED this 1st day of February, 2021 at Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE